

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of
Herbal Science, LLC

Serial No.: 78/176,222

Filed: October 18, 2002

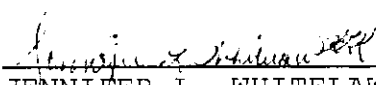
Mark: NUHERBAL RELIEF

NOTICE OF APPEAL AND
REQUEST FOR RECONSIDERATION

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Trademark Examining Attorney dated December 11, 2003, a copy of which is annexed hereto as **Exhibit A**, together with Applicant's filing fee in the amount of \$100.00.

Additionally, Applicant submits a request for reconsideration by the Examining Attorney as to the earlier referenced decision of December 11, 2003. The Request for Reconsideration is annexed hereto as **Exhibit B**.

Respectfully submitted,



JENNIFER L. WHITELAW
WHITELAW LEGAL GROUP
Attorney for Applicant
3838 Tamiami Trail North
Third Floor
Naples, Florida 34103
(239) 262-1001
Facsimile: (239) 261-0057
Email: usptomail@whitelawfirm.com

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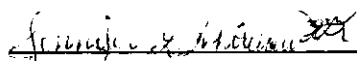
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Serial No.: 78/176,222

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I HEREBY CERTIFY that the original of this Notice of Appeal is being sent via U.S. Certified Mail, Return Receipt Requested, addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on June 11, 2004.


JENNIFER L. WHITELAW

Shimberg No. 8119

EXHIBIT

B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Herbal Science, LLC

Serial No.: 78/176,222

Filed: October 18, 2002

Mark: NUHERBAL RELIEF

Law Office 116

Trademark Attorney

Lauriel F. Dalier

REQUEST FOR RECONSIDERATION

A final office action in the above dated December 11, 2003 has been received and its contents carefully noted. Applicant requests and submits herewith new evidence and new arguments in support with the following response.

NO LIKELIHOOD OF CONFUSION

The Examining Attorney has asserted that Applicant's mark NUHERBAL RELIEF for

Nutritional supplements; herbal products, namely herbal supplements; herbal products, namely medicated skin and lip balms; herbal products for medicinal purposes, namely herbal extracts for use as nutritional and dietary supplements; herbal products, namely medicinal ointments, oils, poisons and tinctures for medical use in the treatment of strokes, infarcts and other cardiovascular and cerebrum diseases; herbal products, namely herbal meal replacement powders for dietary and nutritional purposes; herbal products, namely aroma therapy packs filled with herbs for use in aroma therapy; nutritional dietary supplements; vitamin and mineral preparations intended for use as dietary supplements; vitamins; food supplements; pharmaceuticals and nutraceuticals, namely prescription vitamins and food supplements; pharmaceutical preparations, namely appetite suppressants and lipid lowering agents; food for medically restricted diets; food supplements, namely anti-oxidants; and food for diabetics, infants and enteral feeding, in International Class

is likely to be confused with U.S. Registration No. 2,280,155 for the mark WARM HERBAL RELIEF for "Vitamins and nutritional dietary supplements, in International Class 5." Applicant respectfully disagrees with this contention and shows herein why there is no likelihood of confusion with Applicant's mark which possesses a clearly different sound, meaning and commercial impression from the cited registration.

TEST FOR CONFUSING SIMILARITY

The Lanham Act is intended to provide protection from confusion on the consumer level. It is intended to be measured in the actual marketplace and not in the abstract. As stated by the Court of Customs and Patent Appeals (CCPA) in In re E.I. DuPont de Nemours & Co. 476 F.2d 1357, 177 U.S.P.Q. 563, (CCPA 1973), the objective of the Lanham Act is "making registration more liberal, dispensing with mere technical prohibitions and arbitrary provisions and modernizing the trademark statutes so that they will conform to legitimate present-day business practice." Dupont de Nemours & Co. 177 U.S.P.Q. at 566. The basic goal of the Lanham Act, as stated by the CCPA was "the protection of trademarks, securing to the owner the goodwill of his business and protecting the public against spurious and falsely marked goods." Dupont de

Nemours & Co. 177 U.S.P.Q. at 563. In the instant case, the granting of Applicant's registration will neither transgress upon the goodwill of the cited registrant nor harm the purchasing public. Section 2 of the Lanham Act provides:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it...

(d) consists of or comprises a mark which so resembles a [prior mark] as to be likely, when used on or in connection with the goods of the applicant, to cause confusion...

15 U.S.C. §1052(d) Emphasis supplied.

The test for likelihood of confusion is "whether an appreciable number of ordinarily prudent purchasers" are likely to confuse the source of the newcomer's products or services with the source of another existing prior mark. Solton, Inc. v. Cornwall, Corp., 477 F.Supp. 975, 989 (D.C. N.J. 1979) Emphasis supplied. This test must be considered in perspective. Marks are to be viewed in the context of legitimate present day business practice. Hence, only marks that are confusingly similar to the extent that they disrupt legitimate present day business practice should be refused.

The ultimate question of likelihood of confusion is one of fact and numerous factors are relevant in making that determination. These factors include a comparison of the relevant marks, the services, the care and the sophistication of relevant

purchasers, among others. E.I. DuPont, supra, at p. 566-67; see also TMEP §1207.01.

COMPARING THE MARKS

Among the factors to be considered in determining likelihood of confusion are the similarity of the marks as to appearance, sound, meaning, commercial impression and the similarity of the goods and services. E.I. DuPont, supra, at p. 567; see also TMEP §1207.01. With these factors in mind, a comparison viewing of these marks show that Applicant's composite mark portrays a different appearance and commercial impression from the cited registration.

NUHERBAL RELIEF

Applicant's mark

Serial No. 78/176,222

WARM HERBAL RELIEF

Registrant's mark

Registration No. 2,280,155

With the Examining Attorney's contention that Applicant's mark closely resembles the registrant's mark in its appearance and sound and that Applicant, the test at issue is one of likelihood of confusion. In analyzing the referenced marks, Applicant's mark portrays a different commercial impression and implies a different meaning.

The registrant's mark consists of three separate words, each

with a specific meaning and each understood, within the context of the mark, as relating to each other. The focus of Registrant's mark is on the three words in general being taken as a whole to understand that the product is either warm or needs to be warmed, is of an herbal nature and in some manner provides relief.

Applicant's mark consists predominantly of a single fanciful word with no particular meaning.¹ Conversely, the Registrant's mark requires a specific reliance on descriptive and disclaimed words.

The Examining Attorney maintains that the commercial impression made by both products upon the consumer would be similar but does not support such contention with any evidence. If it is being contended that the Registrant's use of WARM and Applicant's use of NU would lead consumers to believe that the one product is related to the other that contention is just as lacking in evidence and fares no better under the weight of trademark case authority.

The thought that one encountering NUHERBAL would believe that

¹ Applicant respectfully submits that the Examining Attorney may be inappropriately dissecting Applicant's mark into separate component parts in support of the refusal to register. Under the anti-dissection rule, a composite mark is tested for its validity and distinctiveness by looking at it as a whole, rather than dissecting it into its component parts. 1 McCarthy Trademarks and Unfair Competition 4th Ed. §11:26 (1977). "The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety." Estate of P.D. Beckwith, Inc. v. Commissioner of Patents, 252 U.S. 538, 545-46 (1920).

Applicant's mark "NUHERBAL RELIEF" is a unitary and distinctive mark which is thus entitled to registration. The elements in Applicant's marks are so integrated and/or merged together that they cannot be regarded as separable units. If the elements of a mark are so merged together that they cannot be regarded as separate elements, the mark is a single unitary mark. McCarthy, Trademarks and Unfair Competition at §19.20[4]; EBS Data Processing, Inc., 212 USPQ 964 (TTAB 1981).

it is a "new" version of the "WARM HERBAL" product is contrary to actual market behavior and trademark analysis. It is also unsupported by any evidence. The term "warm" has multiple dictionary definitions and meanings while "NU" does not. **Exhibit 1.** NU is either the thirteenth letter of the Greek alphabet or an abbreviation for "Name Unknown." Neither of these definitions have any relevance to the mark in question nor would they influence a potential consumer. Further, Applicant's mark does not split HERBAL into a separate word. The mark instead consists of a singular word that is easily pronounced and understood to be one word. In direct contrast, the Registrant's totally descriptive "mark" is completely dissimilar in this regard.

Additionally, Applicant notes that no evidence is made of record by the Examining Attorney to support the contention that concurrent use of the marks referenced above would likely cause any confusion in the marketplace, especially in view of the differences between the marks. Nor has any actual evidence of confusion in the marketplace been presented by the Examining Attorney, nor is any known to Applicant.

APPLICANT'S EVIDENCE

Applicant submits the following registrations which are

illustrative of the fact that marks sharing a common term may exist without confusion in similar fields. **Exhibit 2.** These examples are contrary to the cite against Applicant noted by the Examining Attorney. The following are examples from the TARR website:

Most notably the mark **REPAIR** is registered for vitamin and mineral supplements in U.S. Trademark Registration No. 2831656. **NU-REPAIR**, U.S. Trademark Registration No. 2381108, identifies its goods as pharmaceuticals, namely vitamins and nutritional supplements. These goods are virtually identical and the marks are nearly identical. Neither mark is owned by the same registrant, nor has either been assigned. The word, **REPAIR**, is the subject of multiple registrations by different registrants for the very goods the Examining Attorney finds related and the marks allowed to stand together on the Principal Register are nearly identical, allowing for consumers to make the choice in the marketplace.

In the same regard, **HEALTH** appears as part of many registered marks. **NUTRI-HEALTH**, U.S. Trademark Registration No. 2175025, recites dietary and mineral supplements; vitamins as its goods. The mark **NU-HEALTH** is for vitamins and dietary and nutritional food supplements in U.S. Trademark Registration No. 1366278. The above marks are primarily connected to vitamins and supplements. Each is registered to different registrants and cause no confusion to the

consumer even though all share the word "HEALTH" with nearly identical prefixes are for virtually identical goods.

Similarly, BLEND marks coexist on the register. The mark **NUTRI-BLEND** is registered for vitamins and dietary food supplements in U.S. Trademark Registration No. 2628684. **NUTRIBERRY BLEND**, the mark in U.S. Trademark Application No. 78224188 published for opposition, identifies a blend of cranberries, aronaberries and wolfberries used in dietary and nutritional supplements; dietary and nutritional supplements as its goods. Both of these marks are deemed able to co-exist with **NU BLENDS**, U.S. Trademark Registration No. 2640552, for providing custom blending of protein supplements, dietary supplements, nutritional supplements and meal replacement powders; custom blended protein supplements, dietary supplements, nutritional supplements and meal replacement powders. Once again, numerous registrations for marks sharing a common term, in this instance "BLEND," with goods and services similar to those that the Examining Attorney holds to be confusingly similar, were allowed to register and were not found confusing similar for consumers.

The present argument of confusing similarity against Applicant was not applied to prevent any of the above registrations and would likewise not seem applicable against the present Applicant.

CITED REGISTRATION: SUPPLEMENTAL REGISTER AND DISCLAIMED TERMS

Significantly weakening the effect of the cited registration is the fact that it is a term which only registered on the Supplemental Register, and beyond that 66% of the mark is disclaimed. With the disclaimer of these words, only one term in the registration is capable of forming any basis for confusing similarity. Registrant's mark would not be on the Supplemental Register for any reason other than that the mark was found highly descriptive of the named goods. Conversely, Applicant's mark is ready for acceptance to the Principal Register.

The mark of the registrant is weak in that it is so highly descriptive a consumer encountering the registrant's product would likely be drawn to the product precisely due to the highly descriptive mark. A consumer in the heightened state of illness, as is the target audience of registrant's product, obviously would be drawn to it for that reason only. Conversely, Applicant's mark does not immediately inform a consumer as to the nature of the product.

HOW EXCLUSIVE IS THE REGISTRANT'S
"EXCLUSIVE" ON THE TERM "RELIEF"?

The only non-disclaimed term in the cited registrant's mark is RELIEF. "RELIEF" is a term which appears in one hundred and twenty

eight (128) other live registrations in the cited registrant's class alone, not including many others in related areas and classes. **Exhibit 3.** The term does not appear to carry with it the strength with which to base a refusal of Applicant's unique in distinct mark. It is worthy to note that there are no other registrations in the entire United States Patent and Trademark Office ("PTO") record for the mark Applicant now seeks to register. In today's multitude of applicants and registrations, and the well populated federal record, that fact is important and highly favorable to Applicant, especially within class 005 registrations.

Since the registrant does not enjoy true exclusivity as to the terms presently being used to construct the refusal of Applicant's mark, the basis is lessened and the refusal should be withdrawn.

SIMILARITY OF IDENTIFIED GOODS

The Examining Attorney has stated that the marks of both the registrant and applicant are "used to identify goods associated with nutritional supplements and vitamins." Additionally, the Examiner has stated that the same consumers will be exposed to the goods identified with the registered mark and the applicant's mark. Further, the Examining Attorney asserts that the goods of the parties need not be identical or directly competitive to find

likelihood of confusion. Instead, the goods need only be related in some manner, or the conditions under which the products are marketed be such that a common consumer would encounter them and, due to these conditions, the consumers would be lead to believe the products emanate from a common source.

In the situation where the terminology in the identification is unclear, the Trademark Trial and Appeal Board permits an applicant to provide extrinsic evidence to show that the registrant's identification has a specific meaning to members of the trade. The Board notes that in light of such evidence it is improper to simply consider the identification in a vacuum and attach all possible interpretations to it. *In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990). See also TMEP section 1207.01(a)(iii).

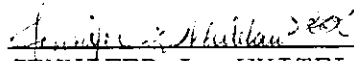
In this instance, Applicant includes printouts from various sources, including Registrant's own web site, indicating that the registrant's product is actually a cold and flu formula in powder form that is mixed with warm water in order for the soothing benefits of the mixture to be released. **Exhibit 4.** The registrant is offering a product designed to help the prospective consumer feel better and recover sooner from the symptoms of a cold or flu, especially emphasizing the warmth of the product as its main benefit. Applicant offers no such product, nor any confusingly

similar product.

CONCLUSION

Applicant's mark is respectfully asserted to be registrable and Applicant therefore requests that the application be passed for publication.

Respectfully submitted,



JENNIFER L. WHITELOW
WHITELOW LEGAL GROUP
Attorney for Applicant
3838 Tamiami Trail North
Third Floor
Naples, Florida 34103
(239) 262-1001
Facsimile: (239) 261-0057
E-mail: usptomail@whitelawfirm.com

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JENNIFER L. WHITELOW




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Main Entry: **nu** 
 Pronunciation: 'nü, 'nyü
 Function: *noun*
 Etymology: Greek *ny*, of Semitic origin; akin to Hebrew *nun*
nun
 : the 13th letter of the Greek alphabet -- see [ALPHABET](#) table

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warm[3,adverb]
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warm front
warm spot

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Main Entry: **1warm**

Pronunciation: 'worm

Function: *adjective*

Etymology: Middle English, from Old English *wearm*; akin to Old High German *warm* warm and probably to Lithuanian *virti* to cook, boil

1 a : having or giving out heat to a moderate or adequate degree **b** : serving to maintain or preserve heat especially to a satisfactory degree <a *warm* sweater> **c** : feeling or causing sensations of heat brought about by strenuous exertion

2 : comfortably established : **SECURE**

3 a : marked by strong feeling : **ARDENT** **b** : marked by excitement, disagreement, or anger <the argument grew *warm*>

4 : marked by or readily showing affection, gratitude, cordiality, or sympathy <a *warm* welcome> <*warm* regards>

5 : emphasizing or exploiting sexual imagery or incidents

6 : accompanied or marked by extreme danger or duress

7 : newly made : **FRESH** <a *warm* scent>

8 : having the color or tone of something that imparts heat; *specifically* : of a hue in the range yellow through orange to red

9 : near to a goal, object, or solution sought

- **warm-ish** /'wor-mish/ *adjective*

- **warm-ness** /'worm-n&s/ *noun*

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warm[3,adverb]
warm-blooded
warm front
warm spot

Main Entry: ²warm

transitive senses

- 1** : to make warm
2 a : to infuse with a feeling of love, friendship, well-being, or pleasure **b** : to fill with anger, zeal, or passion
3 : to reheat (cooked food) for eating -- often used with *over*
4 : to make ready for operation or performance by preliminary exercise or operation -- often used with *up*
intransitive senses

- 1** : to become warm
2 a : to become ardent, interested, or receptive -- usually used with *to* or *toward* <warmed to the idea> **b** : to become filled with affection or love -- used with *to* or *toward*
3 : to experience feelings of pleasure : **BASK**
4 : to become ready for operation or performance by preliminary activity -- often used with *up*

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 warm[3,adverb]
 warm-blooded
 warm front
 warm spot

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warm

FindMain Entry: ³warmFunction: *adverb*: **WARMLY** -- usually used in combination <*warm-clad*>For More Information on "warm" go to [Britannica.com](#)Get the **Top 10 Search Results** for "warm"Pronunciation Symbols**Palm & Pocket PC**

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Serial Number: 76511280

Registration Number: 2831656

Mark (words only): REPAIR

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-04-13

Filing Date: 2003-05-02

Transformed into a National Application: No

Registration Date: 2004-04-13

Register: Principal

Law Office Assigned: LAW OFFICE 111

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2004-05-17

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Ola Loa, LLC

Address:

Ola Loa, LLC
2698 Pacific Avenue
San Francisco, CA 94115
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: California

GOODS AND/OR SERVICES

Vitamin and mineral supplements

International Class: 005

First Use Date: 2003-03-15

First Use in Commerce Date: 2003-03-15

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-04-13 - Registered - Principal Register

2004-01-20 - Published for opposition

2003-12-31 - Notice of publication

2003-11-20 - Approved for Pub - Principal Register (Initial exam)

2003-11-19 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

ROBERT CARSON GODBEY (Attorney of record)

ROBERT CARSON GODBEY
GODBEY & GRIFFITHS
SUITE 2300, PAUAHI TOWER
1001 BISHOP STREET
HONOLULU, HAWAII 96813
Phone Number: (808) 523-8894
Fax Number: (808) 523-8899

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Serial Number: 75732477

Registration Number: 2381102

Mark (words only): NU-REPAIR

Standard Character claim: No

Current Status: Registered.

Date of Status: 2000-08-29

Filing Date: 1999-06-18

Transformed into a National Application: No

Registration Date: 2000-08-29

Register: Principal

Law Office Assigned: TMEG Law Office 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2000-09-05

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. NU-MED USA, Inc

Address:

NU-MED USA, Inc
14101 NW 4th Street
Sunrise, FL 33325
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Nevada

GOODS AND/OR SERVICES

Pharmaceuticals, namely vitamins and nutritional supplements

International Class: 005

First Use Date: 1999-03-01

First Use in Commerce Date: 1999-03-01

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2000-08-29 - Registered - Principal Register

2000-06-06 - Published for opposition

2000-05-05 - Notice of publication

1999-12-28 - Published for opposition

1999-11-26 - Notice of publication

1999-10-07 - Approved for Pub - Principal Register (Initial exam)

1999-10-06 - Case file assigned to examining attorney

1999-09-27 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

Jason Psaltides (Attorney of record)

JASON PSALTIDES
PSALTIDES & ASSOCIATES
14101 NW 4TH STREET
SUNRISE, FLORIDA 33325
United States

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Serial Number: 75319832

Registration Number: 2175025

Mark (words only): NUTRA HEALTH

Standard Character claim: No

Current Status: Registered.

Date of Status: 1998-07-21

Filing Date: 1997-07-07

Transformed into a National Application: No

Registration Date: 1998-07-21

Register: Principal

Law Office Assigned: TMEG Law Office 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2000-03-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. TriNutra, L.L.C.

Address:

TriNutra, L.L.C.
3137 W. Central Ave., Suite 8880
Toledo, OH 43606
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Missouri

GOODS AND/OR SERVICES

dietary and mineral supplements; vitamins

International Class: 005

First Use Date: 1997-04-01

First Use in Commerce Date: 1997-04-01

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1998-07-21 - Registered - Principal Register

1998-04-28 - Published for opposition

1998-03-27 - Notice of publication

1998-02-12 - Approved for Pub - Principal Register (Initial exam)

1998-02-06 - Examiner's amendment mailed

1998-02-04 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

ROBERT L KNECHTEL (Attorney of record)

ROBERT L KNECHTEL
KNECHTEL DEMEUR & SAMLAN
30 S WACKER DR STE 2810
CHICAGO IL 60606
United States

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Serial Number: 73503950 [Assignment Information](#)

Registration Number: 1366278 [Assignment Information](#)

Mark (words only): NU-HEALTH

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 1992-03-09

Filing Date: 1984-10-15

Transformed into a National Application: No

Registration Date: 1985-10-22

Register: Principal

Law Office Assigned: TMEO Law Office # 2

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2002-02-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. CRIVELLO, ROBERT

Address:

CRIVELLO, ROBERT
55 HUNTER LANE
ELMSFORD, NY 10523
United States

Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

VITAMINS AND DIETARY AND NUTRITIONAL FOOD SUPPLEMENTS

International Class: 005

First Use Date: 1981-05-15

First Use in Commerce Date: 1981-05-15

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1992-03-09 - Section 8 (6-year) accepted & Section 15 acknowledged

1991-10-21 - Section 8 (6-year) and Section 15 Filed

1985-10-22 - Registered - Principal Register

1985-08-13 - Published for opposition

1985-07-16 - Notice of publication

1985-06-05 - Approved for Pub - Principal Register (Initial exam)

1985-05-15 - Communication received from applicant

1985-01-29 - Non-final action mailed

1985-01-22 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

EZRA SUTTON (Attorney of record)

EZRA SUTTON
PLAZA 9, 900 ROUTE 9
WOODBIDGE, NJ 07095
United States



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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 2

Serial #: 73503950

Filing Dt: 10/15/1984

Reg #: 1366278

Reg. Dt: 10/22/1985

Registrant: CRIVELLO, ROBERT

Mark: NU-HEALTH

Assignment: 1

Reel/Frame: 0823/0396

Received:

Recorded: 10/28/1991

Pages: 2

Conveyance: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

Assignor: CRIVELLO, ROBERT

DBA/AKA/TA: DBA NU-HEALTH LABORATORIES

Exec Dt: 10/18/1991

Entity Type: INDIVIDUAL

Citizenship: NONE

Assignee: COMMON BROS. INC.

55 HUNTER LANE
ELMSFORD, NEW YORK 10523

Entity Type: CORPORATION

Citizenship: NEW YORK

Correspondent: EZRA SUTTON, P.A.

PLAZA 9, 900 ROUTE 9
WOODBIDGE, NJ 07095

Assignment: 2

Reel/Frame: 2677/0948

Received: 02/26/2003

Recorded: 02/21/2003

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: COMMONS BROTHERS, INC.

Exec Dt: 12/31/2002

Entity Type: CORPORATION

Citizenship: NONE

Assignee: NEW HEALTH INTERNATIONAL, INC.

1541 PARKLOOP, SUITE J
TUSTIN, CALIFORNIA 92780

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Correspondent: JEFFREY S. YONG, ESQ.

801 S. FIGUEROA STREET, SUITE 1175
LOS ANGELES, CA 90017

Search Results as of: 06/11/2004 02:40 PM

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Serial Number: 75778538

Registration Number: 2628684

Mark (words only): NUTRI-BLEND

Standard Character claim: No

Current Status: Registered.

Date of Status: 2002-10-01

Filing Date: 1999-08-18

Transformed into a National Application: No

Registration Date: 2002-10-01

Register: Principal

Law Office Assigned: TMEG Law Office 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2002-10-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. LEINER HEALTH SERVICES CORP.

Address:

LEINER HEALTH SERVICES CORP.

901 East 233rd Street

Carson, CA 90745

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

vitamins and dietary food supplements

International Class: 005

First Use Date: 1999-09-00

First Use in Commerce Date: 1999-09-00

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-10-01 - Registered - Principal Register

2002-04-17 - Allowed for Registration - Principal Register (SOU accepted)

2002-04-12 - Case file assigned to examining attorney

2002-04-11 - Statement of use processing complete

2002-03-18 - Amendment to Use filed

2001-10-23 - Notice of allowance - mailed

2001-07-31 - Published for opposition

2001-07-18 - Notice of publication

2001-02-17 - Approved for Pub - Principal Register (Initial exam)

1999-12-02 - Letter of suspension mailed

1999-11-30 - Case file assigned to examining attorney

1999-11-29 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

MICHAEL A. PAINTER (Attorney of record)

MICHAEL A. PAINTER
ISAACMAN, KAUFMAN & PAINTER
8484 WILSHIRE BOULEVARD
SUITE 850
BEVERLY HILLS,CALIFORNIA 90211
United States

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This page was generated by the TARR system on 2004-06-11 12:08:41 ET

Serial Number: 78224188

Registration Number: (NOT AVAILABLE)

Mark (words only): NUTRIBERRY BLEND

Standard Character claim: No

Current Status: Application has been published for opposition.

Date of Status: 2004-05-11

Filing Date: 2003-03-11

The Information will be/was published in the Official Gazette on 2004-05-11

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 111

Attorney Assigned:
CARTY GEORGIA A Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2004-03-31

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. One World Nutrition, LLC

Address:

One World Nutrition, LLC
12577 South 265 West, 1A
Draper, UT 84020
United States

Legal Entity Type: LIMITED LIABILITY JOINT STOCK COMPANY

State or Country Where Organized: California

GOODS AND/OR SERVICES

Blend of Cranberries, Aronaberries, and Wolfberries used in dietary and nutritional supplements; dietary and nutritional supplements

International Class: 005

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b)

ADDITIONAL INFORMATION

Disclaimer: BLEND

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-05-11 - Published for opposition

2004-04-21 - Notice of publication

2004-03-04 - Approved for Pub - Principal Register (Initial exam)

2004-02-23 - Communication received from applicant

2004-02-23 - PAPER RECEIVED

2003-09-15 - Non-final action mailed

2003-09-10 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

PETER M. DE JONGE (Attorney of record)

PETER M. DE JONGE
THORPE NORTH & WESTERN L.L.P.
P.O. BOX 1219
SANDY UT USA 84091-1219

Phone Number: (801) 566-6633

Fax Number: (801) 566-0750

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Serial Number: 76129384

Registration Number: 2640552

Mark



(words only): NU BLENDS

Standard Character claim: No

Current Status: Registered.

Date of Status: 2002-10-22

Filing Date: 2000-09-18

Transformed into a National Application: No

Registration Date: 2002-10-22

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2002-11-25

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. NuBlends, Inc.

Address:

NuBlends, Inc.
674 Foxon Road
East Haven, CT 06512
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Connecticut

GOODS AND/OR SERVICES

Custom blended protein supplements, dietary supplements, nutritional supplements, meal replacement powders

International Class: 005

First Use Date: 2000-10-00

First Use in Commerce Date: 2000-10-00

Basis: 1(a)

Providing custom blending of protein supplements, dietary supplements, nutritional supplements and meal replacement powders

International Class: 040

First Use Date: 2000-10-00

First Use in Commerce Date: 2000-10-00

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "BLENDS"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-10-22 - Registered - Principal Register

2002-07-29 - Allowed for Registration - Principal Register (SOU accepted)

2002-06-21 - Case file assigned to examining attorney

2002-06-18 - Statement of use processing complete

2002-05-24 - Amendment to Use filed

2001-11-27 - Notice of allowance - mailed

2001-09-04 - Published for opposition

2001-08-15 - Notice of publication

2001-04-23 - Approved for Pub - Principal Register (Initial exam)

2001-04-09 - Examiner's amendment mailed

2001-03-12 - Non-final action mailed

2001-02-21 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent

Melvin I. Stoltz (Attorney of record)

MELVIN I. STOLTZ
51 CHERRY ST
MILFORD CT 06460-8901

Exhibit No. 5119

EXHIBIT

3



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(*relief*[bi,ti] and "005"[ic] and registrant an [Refine Search](#)

Current Search: S2: (*relief*[bi,ti] and "005"[ic] and registrant and live[ld])[ALL] docs: 128 occ: 641

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78159326	2846575	PRO RELIEF	TARR	LIVE
2	78262676	2836667	WAKE TO RELIEF	TARR	LIVE
3	78238085	2823444	IVY ITCH RELEAF	TARR	LIVE
4	78188827	2811878	TUMS SMOOTH DISSOLVE. FAST RELIEF HAS A WHOLE NEW TEXTURE.	TARR	LIVE
5	78143465	2805821	SNORELIEF	TARR	LIVE
6	78123425	2799238	RELIEF EXPRESS	TARR	LIVE
7	78096062	2792890	NUTRIRELIEF	TARR	LIVE
8	78188824	2789919	FAST RELIEF HAS A WHOLE NEW TEXTURE.	TARR	LIVE
9	78156084	2785159	KNEERELIEF	TARR	LIVE
10	78027753	2639572	COUGH RELIEF WITHOUT THE SPOON	TARR	LIVE
11	78134201	2771624	SALONPAS SMOOTH ON RELIEF CREAM	TARR	LIVE
12	78134199	2771623	SALONPAS GLIDE ON RELIEF CREAM	TARR	LIVE
13	78090290	2605002	JUST THE RIGHT RELIEF	TARR	LIVE
14	78076295	2586693	C-2 RELIEF	TARR	LIVE
15	78036255	2510654	HAIR X HAIR LOSS RELIEF	TARR	LIVE
16	78014320	2493603	ALKA-SELTZER MORNING RELIEF	TARR	LIVE
17	76490944	2849008	ZEN STRESS RELIEF	TARR	LIVE
18	76508120	2844460	PURE RELIEF	TARR	LIVE
19	76391246	2843588	SMOKE RELIEF	TARR	LIVE
20	76261483	2843462	FAST RELIEF	TARR	LIVE
21	76459100	2839092	GUT RELIEF	TARR	LIVE
22	76498112	2833970	DR. MIKE'S ARTHRITIS RELIEF	TARR	LIVE

23	76372977	2825869	HERBAL INFLARELIEF	TARR	LIVE
24	76516743	2819498	PHYSICIAN'S PAIN RELIEF CREAM	TARR	LIVE
25	76454605	2745394	KAVA STRESS RELIEF	TARR	LIVE
26	76433977	2762748	SUSTAINED PAIN RELIEF IN-A-SNAP	TARR	LIVE
27	76377736	2699933	MY BUDDY ITCH RELIEF	TARR	LIVE
28	76370475	2639492	TRIPLE RELIEF	TARR	LIVE
29	76304993	2697264	RELIEF SPRAY	TARR	LIVE
30	76294675	2540471	12 HOUR RELIEF 12 3 6 9	TARR	LIVE
31	76294155	2610687	12 HOUR SUSTAINED RELIEF	TARR	LIVE
32	76272395	2637162	REMEDIEF	TARR	LIVE
33	76244727	2720508	RELIEF-SF	TARR	LIVE
34	76230954	2661895	HEALTHY RELIEF	TARR	LIVE
35	76166991	2684863	DEEP RELIEF	TARR	LIVE
36	76164471	2622098	REAL RELIEF. REAL FAST.	TARR	LIVE
37	76139295	2616791	RELIEF	TARR	LIVE
38	76130225	2500176	LAMBERT KAY SHED RELIEF	TARR	LIVE
39	76118379	2555279	RA-ZEN RELIEF	TARR	LIVE
40	76115428	2602313	COOL RELIEF	TARR	LIVE
41	76098945	2675462	TUMS COOL RELIEF	TARR	LIVE
42	76039543	2672708	EMERGENCY RELIEF SYSTEM THE FUTURE OF FIRST AID	TARR	LIVE
43	76030244	2732574	PRO-RELIEF +	TARR	LIVE
44	75094600	2155425	HOW DO YOU SPELL RELIEF? R-O-L-A-I-D-S	TARR	LIVE
45	75326329	2202388	UTI RELIEF	TARR	LIVE
46	75312123	2200621	ALKA-SELTZER GAS RELIEF	TARR	LIVE
47	75552496	2774283	SINURELIEF	TARR	LIVE
48	75886499	2489167	GLUCOSAMINE RELIEF	TARR	LIVE
49	75878507	2412463	RISE TO RELIEF	TARR	LIVE
50	75872756	2406207	SURGI-BIKINI RELIEF	TARR	LIVE
51	75860675	2459327	EQUINE RELIEF ANTIMICROBIAL	TARR	LIVE
52	75859920	2641187	JOINT RELIEF FORMULA	TARR	LIVE
53	75831556	2491588	CLEAN RELIEF	TARR	LIVE
54	75831485	2469031	YOUR NATURAL CHOICE FOR MAXIMUM PAIN RELIEF	TARR	LIVE
55	75817254	2553448	LIVER RELIEF	TARR	LIVE
56	75813149	2371272	ECOTRIN MAXIMUM STRENGTH ARTHRITIS RELIEF #1 DOCTOR RECOMMENDED ASPIRIN BRAND	TARR	LIVE
57	75808571	2461059	DANDRUFF RELIEF	TARR	LIVE
58	75786237	2647420	OSTEO RELIEF	TARR	LIVE
59	75773713	2350286	HEEL PAIN RELIEF (HPR)	TARR	LIVE
60	75667877	2396502	12 HOUR RELIEF ZONE	TARR	LIVE
61	75649085	2400901	ROLL-ON RELIEF	TARR	LIVE

62	75623653	2316490	THE PRESCRIPTION FOR ITCH RELIEF	TARR	LIVE
63	75598051	2320976	FRF FOLLICLE RELIEF FORMULA	TARR	LIVE
64	75597429	2318703	PAIN RELIEF THAT WORKS	TARR	LIVE
65	75597226	2348305	JUST RELIEF	TARR	LIVE
66	75560248	2353285	XTREME RELIEF	TARR	LIVE
67	75542292	2274467	TRUE RELIEF	TARR	LIVE
68	75541916	2559226	RELIEF	TARR	LIVE
69	75539992	2283217	STEPHAN RELIEF	TARR	LIVE
70	75537573	2594605	ARTHRITIS RELIEF PLUS	TARR	LIVE
71	75537143	2470091	OMNI RELIEF	TARR	LIVE
72	75525568	2443072	FEMRELIEF	TARR	LIVE
73	75472774	2369229	RELIEF REMEDY	TARR	LIVE
74	75464190	2280108	PARA-RELIEF	TARR	LIVE
75	75440340	2240633	MONTHLY RELIEF	TARR	LIVE
76	75440336	2238788	HEAD RELIEF	TARR	LIVE
77	75439849	2244541	POWERRELIEF	TARR	LIVE
78	75399227	2266420	THE RELIEF YOU REMEMBER	TARR	LIVE
79	75394486	2250535	KIDRELIEF	TARR	LIVE
80	75375502	2203966	CHANGES RELIEF	TARR	LIVE
81	75364267	2198330	BIO-RELIEF EI-40	TARR	LIVE
82	75363636	2198320	NEUORELIEF	TARR	LIVE
83	75328782	2291412	RELIEF BEYOND BELIEF	TARR	LIVE
84	75327790	2142916	POWERFUL PAIN RELIEF AND SO MUCH MORE	TARR	LIVE
85	75320051	2187575	SMOKER'S RELIEF	TARR	LIVE
86	75317272	2301275	REAL RELIEF	TARR	LIVE
87	75284004	2280155	WARM HERBAL RELIEF	TARR	LIVE
88	75273795	2149392	ARTHRITE X NATURAL RELIEF	TARR	LIVE
89	75232703	2137093	NATURAL RELIEF-1222	TARR	LIVE
90	75201721	2232693	TEI LO TONG	TARR	LIVE
91	75195749	2163393	A NEW LEVEL OF PSORIASIS RELIEF	TARR	LIVE
92	75177258	2108894	FRANK K. WOOD'S PAIN RELIEF RUB	TARR	LIVE
93	75126888	2133317	QUIK RELIEF	TARR	LIVE
94	75094770	2112983	HOW DO YOU SPELL RELIEF?	TARR	LIVE
95	75024250	2015489	HOT LIQUIDS BRING RELIEF	TARR	LIVE
96	75002742	2060006	PUTTING RELIEF IN YOUR HANDS	TARR	LIVE
97	74272328	1818695	ENTERTAINER'S SECRET THROAT RELIEF	TARR	LIVE
98	74730759	2002902	MIGRELIEF	TARR	LIVE
99	74418522	1870319	GASTRO-RELIEF	TARR	LIVE
100	74322231	1852854	RELIEF	TARR	LIVE



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101	74723804	2033088	PRELIEF	TARR	LIVE
102	74666148	1979514	KOOL-DOWN SUNBURN RELIEF	TARR	LIVE
103	74618244	1938804	911 RELIEF	TARR	LIVE
104	74544632	1944742	PEDIA RELIEF	TARR	LIVE
105	74423294	1876297	RELEAF	TARR	LIVE
106	74422684	1886509	CC-A RELIEF	TARR	LIVE
107	74413975	1831041	MEDI-SUN SUNBURN RELIEF	TARR	LIVE
108	74333151	1819649	ULTRA BALM MEDICO SUPPLIES SINGAPORE	TARR	LIVE
109	74233285	1848480	BURN RELIEF	TARR	LIVE
110	74211664	1746746	REDI RELIEF CENTER	TARR	LIVE
111	74115039	1779450	ROLAIDS SPELLS RELIEF	TARR	LIVE
112	74020598	1619342	SHAVER'S RELIEF	TARR	LIVE
113	74000542	1608002	PETRELIEF	TARR	LIVE
114	73414090	1282994	ROBITUSSIN NIGHT RELIEF	TARR	LIVE
115	73754641	1559526	FLEA RELIEF	TARR	LIVE
116	73734483	1526487	LIP RELIEF	TARR	LIVE
117	73678155	1481366	MENTHOLATUM LIP RELIEF	TARR	LIVE
118	73592588	1437033	RELIEF	TARR	LIVE
119	73487597	1331599	ALLERELIEF	TARR	LIVE
120	73415959	1305688	JOBST-RELIEF	TARR	LIVE
121	73299522	1290667	YOUTH-DERM-RELIEF	TARR	LIVE
122	73169282	1106492	THE SOUND OF FAST RELIEF	TARR	LIVE

123	73128986	1118604	EX-LAX PILLS FOR RELIEF OF CONSTIPATION	TARR	LIVE
124	73096602	1074406	PLOP, PLOP, FIZZ, FIZZ, OH WHAT A RELIEF IT IS!	TARR	LIVE
125	73002253	1006829	RELIEF	TARR	LIVE
126	72421271	0974485	DESEMPACHO	TARR	LIVE
127	72251265	0825909	ALO-RELIEF	TARR	LIVE
128	72192056	0796286	RELIEF IS JUST A SWALLOW AWAY	TARR	LIVE

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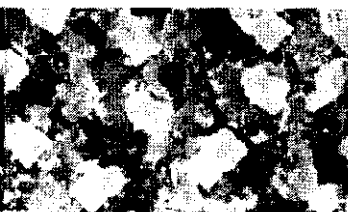
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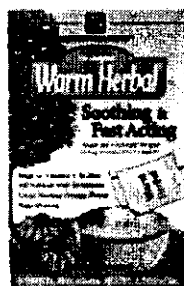
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Cold Season Support ... when you don't have time for a cold.

Liquid, Powder, & Lozenges | Tablets

Liquid, Powder, & Lozenges



Product

Liquid Echinacea King® Strawberry 🌿

Available in 2 oz. liquid.

Warm Herbal™ 🌿

Available in 6 packet box.

Zinc King® Lozenges Orange 🌿

Available in 60 count bottle.

Zinc King® Lozenges Raspberry 🌿

Available in 60 count bottle.

Description

Echinacea support for the immune system* in a natural liquid to absorb quickly and work fast. Available in a natural strawberry flavor. More information on Echinacea.

Get through the day with the powerful formula that combines Echinacea, Elderberry, Vitamin C and Zinc. Great-tasting orange flavor.

The best tasting Zinc around works fast because these great-tasting chewables are absorbed quickly. More information on Zinc.

The best tasting Zinc around works fast because these great-tasting chewables are absorbed quickly. More information on Zinc.

Tablets

**Product****Chewable Echinacea King®
Plus Zinc** 🌿*Available in 60 count bottle.***Chewable Echinacea King®
Assorted Flavors** 🌿*Available in 100 count bottle.***Chewable Echinacea King®
Cherry** 🌿*Available in 60 count bottle.***Chewable Echinacea King®
Orange** 🌿*Available in 60 count bottle.***Chewable Echinacea King®
Raspberry** 🌿*Available in 60 count bottle.***Chewable Echinacea King®
Strawberry** 🌿*Available in 60 count bottle.***Description**

Echinacea and Zinc are combined for powerful immune system support.* Available in a natural raspberry flavor. More information on Echinacea.

Tasty chewable tablets packed with a powerful combination of Echinacea and Vitamin C. Includes natural orange, raspberry and cherry flavored chewable tablets. More information on Echinacea.

Tasty chewable tablets packed with a powerful combination of Echinacea and Vitamin C. More information on Echinacea.

Tasty chewable tablets packed with a powerful combination of Echinacea and Vitamin C. More information on Echinacea.

Tasty chewable tablets packed with a powerful combination of Echinacea and Vitamin C. More information on Echinacea.

Tasty chewable tablets packed with a powerful combination of Echinacea and Vitamin C. More information on Echinacea.

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Warm Herbal Relief - Cold & Flu Formula, 6 pack

More From Nutrition Now
Item # 58575



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List Price: \$5.99
Usually ships in 24 hours

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Product Details

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- Description
- Ingredients
- Dosage
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- Does Not Contain

Description:

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Warm Herbal combines the power of Echinacea, Willow Bark, Zinc, and Vitamin C. The Original Warm Herbal Relief. Soothing help for the cold season. Just mix the easy to use pre-measured packet with warm water for a soothing blend of all-natural ingredients to help you feel better fast.

Ingredients:

[▲ Top](#)

Vitamin a (as beta carotene), vitamin c, zinc, echinacea purpurea extract, elderberry extract, willow bark extract, in a base of: maltodextrin (complex carbohydrates), dextrose, citric acid, natural orange flavorings, natural fruit flavors, stevia.

Dosage:

[▲ Top](#)

As a dietary supplement, adults and children 12 years and older: Dissolve one packet in 6 ounces of hot water, stir briskly until orange color appears (stirring activates the formula). Microwave Heating Instructions: Add contents of packet and 6 ounces of cool water to a microwave safe cup and stir. Microwave on high 1 1/2 minutes or until hot, stir briskly until orange color appears (stirring activates the formula). Do not boil water or overheat. Stir liquid between reheatings. May repeat every 6 hours, but not to exceed 4 doses in 24 hours.

Cautions:

[▲ Top](#)

A persistent cough, fever, cold or flu may be a sign of a serious condition. Consult your doctor immediately. Do not take this product if you have a medical condition or are on any medication. As with any dietary supplement, consult your health care professional before using this product if you are pregnant or nursing a baby. Take only as directed.

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List Price: \$4.99

Our Price: \$3.99

Quantity:

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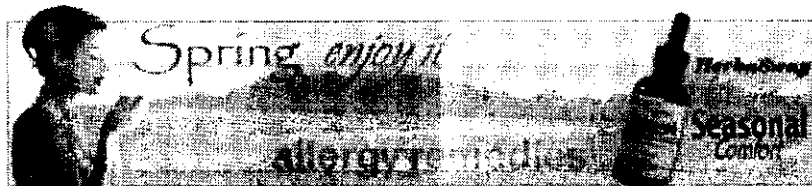
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 **ADD TO CART**[Read reviews on Warm Herbal Relief](#)[Email Warm Herbal Relief to a friend](#)**Availability:** Usually ships within 24 hours**Description:**

Information for this product is currently being updated.

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Size 6

Serving Size 1 packet

Servings 6

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Description

Warm Herbal™ combines the power of Echinacea, Willow Bark, Zinc, and Vitamin C in a soothing all-natural hot liquid. There's nothing else like it!

Contains

Echinacea, Elderberry, Willow Bark, Zinc, Vitamin C

Suggested Use

As a dietary supplement, adults and children 12 years and older: Dissolve one packet in 6 ounces of hot water, stir briskly until orange color appears (stirring activates the formula). Microwave Heating Instructions: Add contents of packet and 6 ounces of cool water to a microwave safe cup and stir. Microwave on high 1 1/2 minutes or until hot, stir briskly until orange color appears (stirring activates the formula). Do not boil water or overheat. Stir liquid between reheatings. May repeat every 6 hours, but not to exceed 4 doses in 24 hours.

Ingredients

Vitamin A (as beta carotene).400iu.8%, Vitamin C.60mg.100%, Zinc.7.5mg.50%, Echinacea Purpurea Extract.400mg, Elderberry Extract.50mg, Willow Bark Extract.13mg, in a base of: Malto Dextrin (complex carbohydrates), Dextrose, Citric Acid, Natural Orange Flavorings, Natural Fruit Flavors, and Stevia [%U.S.RDA], [Unites States Recommended Daily Allowance for adults and children 12 or more years of age]

Does Not Contain

Artificial Colors, Yeast, Egg, Preservatives, Starch, Salt, Wheat, Milk, Soy, Glutens, Milk Derivatives.

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Warnings / Cautions

A persistent cough, fever, cold or flu may be a sign of a serious condition. Consult your doctor immediately. Do not take this product if you have a medical condition or are on any medication. As with any dietary supplement, consult your health care professional before using this product if you are pregnant or nursing a baby. Take only as directed.

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Warm Herbal Relief, 6 pack

Retail: \$4.99 Our Sale Price: **\$3.29**

Description of Warm Herbal Relief:

Warm Herbal Relief 6 pack by Nutrition Now

Warm Herbal contains echinacea, willow bark, zinc, and vitamin C in a soothing hot liquid to boost immune function and calm symptoms of cold and flu.

Warm Herbal Relief Research:

Nutrition Now The Original Warm Herbal Relief. Soothing help for the cold season. Pour one packet of powder into hot water and feel better fast. All Natural, no drowsiness, great tasting. Great tasting orange flavor. Warm Herbal Relief is a soothing blend of all-natural ingredients to help you feel better fast. Our Echinacea is grown on our family farm in Oregon to ensure the quality of Warm Herbal Relief. Echinacea has been used for centuries as a strong defender against colds. Vitamin C helps lessen the symptoms of a cold. Zinc has been shown to reduce the length of time a person is sick with a cold. Elderberry is a good herbal fighter against colds. Nutrition Now products are manufactured under strict control to maintain the quality, purity and potency of all ingredients. The power of Echinacea combined with Elderberry, Willow Bark, Zinc and Vitamin C in a great tasting all-natural liquid. When you are feeling achy, have a fever, runny nose, cough, headache, or sore throat from a cold, reach for the soothing relief of the original, all natural Warm Herbal Relief. Warm Herbal Relief helps you feel better fast and tastes great.

Warm Herbal Relief Directions/Usage:

As a dietary supplement, adults and children 12 years and older: Dissolve one packet in 6 ounces of hot water, stir briskly until orange color appears (stirring activates the formula). Microwave Heating Instructions: Add contents of packet and 6 ounces of cool water to a microwave safe cup and stir. Microwave on high 1 1/2 minutes or until hot, stir briskly until orange color appears (stirring activates the formula). Do not boil water or overheat. Stir liquid between reheatings. May repeat every 6 hours, but not to exceed 4 doses in 24 hours.

A persistent cough, fever, cold or flu may be a sign of a serious condition.

Consult your doctor immediately. Do not take this product if you have a medical condition or are on any medication. As with any dietary supplement, consult your health care professional before using this product if you are pregnant or nursing a baby. Take only as directed.

Warm Herbal Relief Ingredients:

Warm Herbal Relief: Vitamin A (as beta carotene)...400iu...8%, Vitamin C...60mg...100%, Zinc...7.5mg...50%, Echinacea Purpurea Extract...400mg, Elderberry Extract...50mg, Willow Bark Extract...13mg, in a base of: Malto Dextrin (complex carbohydrates), Dextrose, Citric Acid, Natural Orange Flavorings, Natural Fruit Flavors, and Stevia [%U.S.RDA], [Unites States Recommended Daily Allowance for adults and children 12 or more years of age]. Echinacea, Elderberry, Willow Bark, Zinc, Vitamin C.
Does not contain Artificial Colors, Yeast, Egg, Preservatives, Starch, Salt, Wheat, Milk, Soy, Glutens, Milk Derivatives.

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Warm Herbal Relief, 6 pack

Availability: Usually ships in 1-2 business days.

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Warm Herbal, 6 per pack, Nutrition Now

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Availability: Usually ships in 2-3 business days.

117121 Regular price: \$4.99 Sale price: **\$4.03** [Order](#)

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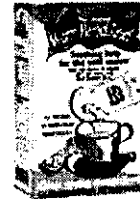
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WARM HERBAL COLD RELIEF

Description:

Warm Herbal™ combines the power of Echinacea, Willow Bark, Zinc, and Vitamin C in a soothing all-natural hot liquid. There's nothing else like it!*

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Size: 6pack
List Price: \$CAD 8.40

Our Price: \$CAD 5.88

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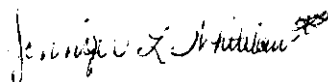
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Serial No.: 78/176,222
Applicant: Herbal Science, LLC
Office Action Date: December 11, 2003

Dear Commissioner:

I enclose for filing and examination Notice of Appeal, Request for Reconsideration and check in the above matter.

Please date stamp and return the stamped self-addressed postcard which is also enclosed.

Sincerely,



Jennifer L. Whitelaw

Enclosures - 4

cc: Kay F. Gow, Ed.D.



06-15-2004

2

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